

CENTER FOR DISABILITY ACCESS  
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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
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14 **Scott Johnson,**  
15 Plaintiff,  
16 v.  
17 **Cong Thanh LLC, a California**  
18 **Limited Liability Company;**  
19 **Taquerias El Farolito Inc., a**  
20 **California Corporation; and Does**  
21 **1-10,**  
22 Defendants.

23 **Case No.**

24 **Complaint For Damages And**  
25 **Injunctive Relief For Violations**  
26 **Of: American's With Disabilities**  
27 **Act; Unruh Civil Rights Act**

28 Plaintiff Scott Johnson complains of Cong Thanh LLC, a California  
1 Limited Liability Company; Taquerias El Farolito Inc., a California  
2 Corporation; and Does 1-10 ("Defendants"), and alleges as follows:  
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4

5 **PARTIES:**

6 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a  
7 level C-5 quadriplegic. He cannot walk and also has significant manual  
8 dexterity impairments. He uses a wheelchair for mobility and has a specially  
9 equipped van.

10 2. Defendant Cong Thanh LLC owned the real property located at or about  
11 3140 Senter Rd., San Jose, California, in June 2019 and July 2019.

1       3. Defendant Cong Thanh LLC owns the real property located at or about  
2       3140 Senter Rd., San Jose, California, currently.

3       4. Defendant El Farolito Inc. owned El Farolito located at or about 3140  
4       Senter Rd., San Jose, California, in June 2019 and July 2019.

5       5. Defendant El Farolito Inc. owns El Farolito (“Restaurant”) located at or  
6       about 3140 Senter Rd., San Jose, California, currently.

7       6. Plaintiff does not know the true names of Defendants, their business  
8       capacities, their ownership connection to the property and business, or their  
9       relative responsibilities in causing the access violations herein complained of,  
10      and alleges a joint venture and common enterprise by all such Defendants.  
11      Plaintiff is informed and believes that each of the Defendants herein,  
12      including Does 1 through 10, inclusive, is responsible in some capacity for the  
13      events herein alleged, or is a necessary party for obtaining appropriate relief.  
14      Plaintiff will seek leave to amend when the true names, capacities,  
15      connections, and responsibilities of the Defendants and Does 1 through 10,  
16      inclusive, are ascertained.

17  
18      **JURISDICTION & VENUE:**

19       7. The Court has subject matter jurisdiction over the action pursuant to 28  
20      U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
21      Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

22       8. Pursuant to supplemental jurisdiction, an attendant and related cause  
23      of action, arising from the same nucleus of operative facts and arising out of  
24      the same transactions, is also brought under California’s Unruh Civil Rights  
25      Act, which act expressly incorporates the Americans with Disabilities Act.

26       9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
27      founded on the fact that the real property which is the subject of this action is  
28      located in this district and that Plaintiff's cause of action arose in this district.

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**FACTUAL ALLEGATIONS:**

3  
4 10. Plaintiff went to the Restaurant in June 2019 and July 2019 (twice) with  
5 the intention to avail himself of its goods, motivated in part to determine if the  
6 defendants comply with the disability access laws.

7 11. The Restaurant is a facility open to the public, a place of public  
8 accommodation, and a business establishment.

9 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed  
10 to provide wheelchair accessible parking in conformance with the ADA  
11 Standards as it relates to wheelchair users like the plaintiff.

12 13. On information and belief the defendants currently fail to provide  
13 wheelchair accessible parking.

14 14. Additionally, on the dates of the plaintiff's visits, the defendants failed  
15 to provide wheelchair accessible entrance door hardware in conformance with  
16 the ADA Standards as it relates to wheelchair users like the plaintiff.

17 15. On information and belief the defendants currently fail to provide  
18 wheelchair accessible entrance door hardware.

19 16. On the dates of the plaintiff's visits, the defendants failed to provide  
20 wheelchair accessible sales counters in conformance with the ADA Standards  
21 as it relates to wheelchair users like the plaintiff.

22 17. On information and belief the defendants currently fail to provide  
23 wheelchair accessible sales counters.

24 18. Moreover, on the dates of the plaintiff's visits, the defendants failed to  
25 provide wheelchair accessible restrooms in conformance with the ADA  
26 Standards as it relates to wheelchair users like the plaintiff.

27 19. On information and belief the defendants currently fail to provide  
28 wheelchair accessible restrooms.

1       20. On the dates of the plaintiff's visits, the defendants failed to provide  
2 wheelchair accessible paths of travel inside the Restaurant in conformance  
3 with the ADA Standards as it relates to wheelchair users like the plaintiff.

4       21. On information and belief the defendants currently fail to provide  
5 wheelchair accessible paths of travel inside the Restaurant.

6       22. These barriers relate to and impact the plaintiff's disability. Plaintiff  
7 personally encountered these barriers.

8       23. As a wheelchair user, the plaintiff benefits from and is entitled to use  
9 wheelchair accessible facilities. By failing to provide accessible facilities, the  
10 defendants denied the plaintiff full and equal access.

11      24. The failure to provide accessible facilities created difficulty and  
12 discomfort for the Plaintiff.

13      25. The defendants have failed to maintain in working and useable  
14 conditions those features required to provide ready access to persons with  
15 disabilities.

16      26. The barriers identified above are easily removed without much  
17 difficulty or expense. They are the types of barriers identified by the  
18 Department of Justice as presumably readily achievable to remove and, in fact,  
19 these barriers are readily achievable to remove. Moreover, there are numerous  
20 alternative accommodations that could be made to provide a greater level of  
21 access if complete removal were not achievable.

22      27. Plaintiff will return to the Restaurant to avail himself of its goods and to  
23 determine compliance with the disability access laws once it is represented to  
24 him that the Restaurant and its facilities are accessible. Plaintiff is currently  
25 deterred from doing so because of his knowledge of the existing barriers and  
26 his uncertainty about the existence of yet other barriers on the site. If the  
27 barriers are not removed, the plaintiff will face unlawful and discriminatory  
28 barriers again.

1       28. Given the obvious and blatant nature of the barriers and violations  
2 alleged herein, the plaintiff alleges, on information and belief, that there are  
3 other violations and barriers on the site that relate to his disability. Plaintiff will  
4 amend the complaint, to provide proper notice regarding the scope of this  
5 lawsuit, once he conducts a site inspection. However, please be on notice that  
6 the plaintiff seeks to have all barriers related to his disability remedied. See  
7 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
8 encounters one barrier at a site, he can sue to have all barriers that relate to his  
9 disability removed regardless of whether he personally encountered them).

10

11 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
12 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
13 Defendants.) (42 U.S.C. section 12101, et seq.)

14       29. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
15 again herein, the allegations contained in all prior paragraphs of this  
16 complaint.

17       30. Under the ADA, it is an act of discrimination to fail to ensure that the  
18 privileges, advantages, accommodations, facilities, goods and services of any  
19 place of public accommodation is offered on a full and equal basis by anyone  
20 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
21 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 22           a. A failure to make reasonable modifications in policies, practices,  
23           or procedures, when such modifications are necessary to afford  
24           goods, services, facilities, privileges, advantages, or  
25           accommodations to individuals with disabilities, unless the  
26           accommodation would work a fundamental alteration of those  
27           services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 28           b. A failure to remove architectural barriers where such removal is

1           readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
2           defined by reference to the ADA Standards.

3           c. A failure to make alterations in such a manner that, to the  
4           maximum extent feasible, the altered portions of the facility are  
5           readily accessible to and usable by individuals with disabilities,  
6           including individuals who use wheelchairs or to ensure that, to the  
7           maximum extent feasible, the path of travel to the altered area and  
8           the bathrooms, telephones, and drinking fountains serving the  
9           altered area, are readily accessible to and usable by individuals  
10          with disabilities. 42 U.S.C. § 12183(a)(2).

11          31. When a business provides parking for its customers, it must provide  
12          accessible parking.

13          32. Here, accessible parking has not been provided.

14          33. When a business provides door hardware, it must provide accessible  
15          door hardware.

16          34. Here, accessible door hardware has not been provided.

17          35. When a business provides facilities such as sales or transaction counters,  
18          it must provide accessible sales or transaction counters.

19          36. Here, accessible sales or transaction counters have not been provided.

20          37. When a business provides facilities such as restrooms, it must provide  
21          accessible restrooms.

22          38. Here, accessible restrooms have not been provided.

23          39. When a business provides paths of travel, it must provide accessible  
24          paths of travel.

25          40. Here, accessible paths of travel have not been provided.

26          41. The Safe Harbor provisions of the 2010 Standards are not applicable  
27          here because the conditions challenged in this lawsuit do not comply with the  
28          1991 Standards.

1       42. A public accommodation must maintain in operable working condition  
2 those features of its facilities and equipment that are required to be readily  
3 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

4       43. Here, the failure to ensure that the accessible facilities were available  
5 and ready to be used by the plaintiff is a violation of the law.

6 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL  
7 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
8 Code § 51-53.)**

9       44. Plaintiff repleads and incorporates by reference, as if fully set forth  
10 again herein, the allegations contained in all prior paragraphs of this  
11 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
12 that persons with disabilities are entitled to full and equal accommodations,  
13 advantages, facilities, privileges, or services in all business establishment of  
14 every kind whatsoever within the jurisdiction of the State of California. Cal.  
15 Civ. Code § 51(b).

16       45. The Unruh Act provides that a violation of the ADA is a violation of the  
17 Unruh Act. Cal. Civ. Code, § 51(f).

18       46. Defendants’ acts and omissions, as herein alleged, have violated the  
19 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
20 rights to full and equal use of the accommodations, advantages, facilities,  
21 privileges, or services offered.

22       47. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
23 discomfort or embarrassment for the plaintiff, the defendants are also each  
24 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
25 (c).)

26       48. Although the plaintiff was markedly frustrated by facing discriminatory  
27 barriers, even manifesting itself with minor and fleeting physical symptoms,  
28 the plaintiff does not value this very modest physical personal injury greater

1 than the amount of the statutory damages.  
2

3 **PRAYER:**

4 Wherefore, Plaintiff prays that this Court award damages and provide  
5 relief as follows:

6 1. For injunctive relief, compelling Defendants to comply with the  
7 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
8 plaintiff is not invoking section 55 of the California Civil Code and is not  
9 seeking injunctive relief under the Disabled Persons Act at all.

10 2. Damages under the Unruh Civil Rights Act, which provides for actual  
11 damages and a statutory minimum of \$4,000 for each offense.

12 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
13 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

14 Dated: March 3, 2020

CENTER FOR DISABILITY ACCESS

16 By:  
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18  
19 Amanda Seabock, Esq.  
Attorney for plaintiff